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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA

12 United States of America,
13
14 Plaintiff,
vs.
15 David Allen Harbour,
16 Defendant.
17

No. CR-19-00898-PHX-DLR

**UNITED STATES'
SUPPLEMENTAL JURY
INSTRUCTIONS**

18 The United States requests the following six supplemental jury instructions.

19 Respectfully submitted this 22nd day of February, 2023.

20 GARY M. RESTAINO
United States Attorney
District of Arizona

21 *s/ Kevin M. Rapp*

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1 **1. Transactional Money Laundering—Concealment Not Required**

2 Concealment is not an element of the offense of Transactional Money
3 Laundering. It is a violation of the statute even if the financial transaction was conducted
4 openly and with no intent to disguise either the nature of the transaction or the identity
5 of the person involved.

6
7 **AUTHORITY**

8 *United States v. Messer*, 197 F.3d 330, 341 (9th Cir. 1999) (“To prove a conviction
9 under § 1957, the government must establish that Appellants: (1) knowingly
10 engaged in a financial transaction; (2) knew that the transaction involved criminal
11 property; (3) the property’s value exceeded \$10,000; and (4) the property was in fact
12 derived from a specified unlawful activity.”)

13 *Cf. United States v. Montoya*, 945 F.2d 1068, 1076 (9th Cir. 1991) *abrogated*
14 *on other grounds by McCormick v. United States*, 500 U.S. 257 (1991) (upholding
15 defendant’s conviction for money laundering under 18 U.S.C. § 1956, even though “he
16 never attempted to conceal the transaction,” because “an intent to launder, disguise
17 or thwart detection of the source or purpose of monies deposited into a bank is not
18 a required element of the section 1956 offense for which Montoya was charged”).

3. “False or Fraudulent”—Half Truths

A “false or fraudulent” representation also may be made by statements of half-truths or the concealment of material facts as well as by affirmative statements or acts. That is, if a person represents that a particular fact or set of facts exists but at the same time knowingly and intentionally and with intent to deceive fails to reveal other relevant and material facts concerning those representations which would place a different light on the matters represented, the failure to disclose the other material facts may make the matters represented “false or fraudulent” within the meaning of the statutes.

AUTHORITY

United States v. Sayakhom, 186 F.3d 928, 941 (9th Cir. 1999) (“Intent [to defraud] need not be established by direct evidence, but may be inferred from the defendant's statements and conduct. ‘Deceitful statements of half truths or the concealment of material facts is actual fraud under the mail fraud statute.’”) (citation omitted).

United States v. Allen, 554 F.2d 398, 410 (10th Cir. 1977) (“[F]raudulent representations, as the term is used in 18 U.S.C.A. § 1341, may be effected by deceitful statements of half-truths or the concealment of material facts and the devising of a scheme for obtaining money or property by such statements or concealments is within the prohibition of the statute.”).

Lustiger v. United States, 386 F.2d 132, 138 (9th Cir. 1967) (“While the statements in the advertising materials may not have been literally false, taken as a whole they were fraudulently misleading and deceptive.”).

5. Belief That Investors Will Eventually Be Repaid Is Not A Defense

Although an honest, good-faith belief in the truth of a misrepresentation may negate intent to defraud, a good-faith belief that an investor will eventually be repaid and will sustain no loss is no defense at all.

AUTHORITY

United States v. Molinaro, 11 F.3d 853, 863 (9th Cir. 1992) (holding that the following instruction “accurately stated the law”: “You may determine whether a defendant had an honest, good faith belief in the truth of the specific misrepresentations alleged in the indictment in determining whether or not the defendant acted with intent to defraud. However, a defendant’s belief that the victim of the fraud will be paid in the future or will sustain no economic loss is no defense to the crimes charged in the indictment.”).

United States v. Benny, 786 F.2d 1410, 1414 (9th Cir. 1986) (“*While an honest, good-faith belief in the truth of the misrepresentations may negate intent to defraud, a good-faith belief that the victim will be repaid and will sustain no loss is no defense at all.*”) (emphasis added)

1 **6. Negligence of Investors**

2 You are further instructed that the possibility that an investor may have been
3 negligent or naive in failing to detect the plan or scheme is no defense to a defendant
4 charged with fraud.

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6 **AUTHORITY**

7 *United States v. Ciccone*, 219 F.3d 1078, 1083 (9th Cir. 2000) (holding that “[i]n
8 this circuit, [i]t is immaterial whether only the most gullible would have been
9 deceived by the defendants’ scheme” and that “the wire-fraud statute protects the
10 naive as well as the worldly-wise”) (citations and internal quotation marks omitted).

11 *United States v. Hanley*, 190 F.3d 1017, 1023 (9th Cir. 1999), overruled on
12 other grounds by *United States v. Martin*, 278 F.3d 988, 1003 (9th Cir. 2002)
13 (“Defendants argue that their convictions must be reversed, because the government
14 failed to prove that they had devised a scheme reasonably calculated to deceive persons
15 of ordinary prudence and comprehension. However, the law of this circuit does not
16 require such a showing. In this circuit, ‘[i]t is immaterial whether only the most
17 gullible would have been deceived’ by the defendants’ scheme.”) (citation omitted).

CERTIFICATE OF SERVICE

I hereby certify that on 22nd day of February 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

s/Daniel Parke
U.S. Attorney's Office